



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

May 6, 1954

Hon. M. T. Harrington  
Chancellor  
Texas A. & M. College System  
College Station, Texas

Letter Opinion No. MS-129

Re: Status of balances  
in funds derived from  
sale of sub-experiment  
station lands.

Dear Mr. Harrington:

You have requested an opinion on whether the unexpended balances of the proceeds from the sale of land at the Nacogdoches and San Antonio sub-experiment stations of the Agricultural Experiment Station System were appropriated by the 53rd Legislature. These sales were made prior to the beginning of the current biennium. The funds derived from the sales were deposited in the State Treasury as required by Article 140, Vernon's Civil Statutes.

Funds derived from the sale of land at the experiment stations are classified as institutional funds. Att'y. Gen. Op. V-01 (1947). Article V of the 1953 appropriation act (Ch. 81, Acts 53rd Leg., R.S., 1953) contains the following provisions:

"Sec. 2. Institutional Fund Balances Re-appropriated. All balances in the institutional funds of the several State institutions named in this Article, at the close of the fiscal year ending August 31, 1953, including balances in their revolving funds at that time, and the entire income to said funds during each of the fiscal years ending August 31, 1954, and August 31, 1955, which are not otherwise appropriated for either or both of said fiscal years, are hereby appropriated for the operation, maintenance, and improvement of said State institutions during each of said fiscal years respectively."

"Sec. 17. . . . q. Disposal of property. No property valued in excess of Five Hundred Dollars (\$500) and belonging to any of the institutions herein provided for, or any agency thereof, shall be sold or disposed of without the direction of the Legislature or the consent of its Governing Board, and all proceeds from the sale of such

property, from labor performed, from the sale of materials, crops, and supplies, from fees and any and all other receipts, shall become and are hereby appropriated for the use of the respective institutions to be expended in compliance with the provisions of this Act and under the direction and with the approval of the Governing Board having jurisdiction. Any balance remaining to the credit of any of said institutional local funds at said institution at the end of any fiscal year is hereby appropriated for the above-mentioned purposes for the succeeding year."

Opinion V-01, supra, held that balances from the sale of sub-experiment station property were appropriated by a provision in the 1945 appropriation act corresponding to the last sentence of Section 17, subsection q, which read:

" . . . Any balances remaining to the credit of any of said institutional local funds at said institution or in the State Treasury at the end of any fiscal year are hereby reappropriated for the above-mentioned purposes for the succeeding year." (Emphasis supplied.)

The Comptroller's Department takes the position that these balances are not appropriated by the 1953 act, since the language "or in the State Treasury" is omitted. This position might be tenable if the Legislature had failed to make any other appropriation of institutional fund balances. However, Section 2 of Article V appropriates all institutional fund balances which are not otherwise appropriated. If subsection q of Section 17 is insufficient to appropriate these balances, nevertheless they clearly come within the provisions of Section 2.

We are not unmindful of the rule that where an act contains conflicting provisions, the provision which is later in position is controlling. Stevens v. State, 70 Tex. Crim. 565, 159 S.W. 505 (1913). This rule is applied only where the provisions are irreconcilably in conflict and cannot be harmonized. Stevens v. State, supra; 39 Tex. Jur., Statutes, § 113 and cases there cited. We do not find an irreconcilable conflict between Section 2 and subsection q of Section 17. Subsection q does not contain a prohibition against the expenditure of these balances during the current biennium. Section 2 by its express language has application to all institutional fund balances which are not otherwise appropriated, and cannot conflict with a pro-

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vision which merely fails to appropriate but which does not prohibit the making of the appropriation.

We are also cognizant of the holdings that the Legislature in re-enacting a provision must have intended the natural result of the omission of language therefrom. See, for example, Att's. Gen. Op. O-4365-A (1942). The explanation for the elimination of the phrase "or in the State Treasury" from subsection q of Section 17 probably is found in the change which the 52nd Legislature made in the handling and deposit of certain types of institutional funds which theretofore had been kept in local depositories but which are now required to be placed in the State Treasury and which are now appropriated in subsection m of Section 17. It was probably thought that this subsection covered all institutional funds which were in the State Treasury. It is unnecessary in this opinion to discuss the sufficiency of subsection m to appropriate these particular funds, since in any event they have been appropriated in Section 2.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By (Signed) Mary K. Wall  
Assistant

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